

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

BLUE SKY NETWORKS, LLC,

Plaintiff,

v.

HUAWEI DEVICE CO. LTD., and
HUAWEI DEVICE USA, INC.,

Defendants.

§
§
§
§
§
§
§
§
§
§

6:17-cv-00156-JRG-JDL

**DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES TO
PLAINTIFF'S ORIGINAL COMPLAINT**

Defendants, Huawei Device Co. Ltd. and Huawei Device USA, Inc. (collectively "Huawei"), by and through its undersigned counsel, hereby Answer and assert Affirmative Defenses to the Original Complaint and Jury Demand (the "Complaint") filed by Blue Sky Networks, LLC ("Blue Sky"). Huawei denies all allegations except those specifically admitted and states:

ANSWER

THE PARTIES

1. Huawei lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 of the Complaint and therefore denies those allegations.

2. Huawei admits that Huawei Device USA, Inc. is a Texas corporation headquartered in this judicial district at 5700 Tennyson Parkway, Suite 500, Plano, TX

75024 and may be served through its registered agent, CT Corporation System, 1999 Bryan St., Suite 900, Dallas, TX 75201-3136.

3. Huawei admits that Huawei Device Co., Ltd., is a company headquartered in Shenzhen, Guangdong Province of the People's Republic of China. Huawei Device Co. Ltd. has a principal place of business located at Building 2, Section B, Huawei Industrial Base, Bantian, Longgang Dist., Shenzhen, Guangdong, 518129 P.R.C. Huawei denies all other allegations of paragraph 3 of the Complaint.

JURISDICTION AND VENUE

4. Huawei admits that this suit purports to be brought under the United States Patent Act, namely 35 U.S.C. §§ 271, 281, and 284-285, among other laws and that this Court has subject-matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338(a), and 1367. Huawei denies that Blue Sky is entitled to any relief.

5. Huawei admits, for purposes of this action only, that venue is proper in this judicial district. Huawei also admits that Huawei Device USA, Inc. is headquartered in this judicial district. Huawei denies all other allegations of paragraph 5 of the Complaint.

6. Huawei denies the allegations of Paragraph 6 of the Complaint.

7. Huawei admits that Huawei Device USA, Inc. resides in this judicial district. Huawei admits, for the purpose of this action only, that Huawei is subject to this Court's personal jurisdiction. Huawei denies all other allegations of Paragraph 7 of the Complaint.

8. Huawei lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8 of the Complaint and therefore denies those allegations.

9. Huawei lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 9 of the Complaint and therefore denies those allegations.

The '398 OFDM Patent

10. Huawei lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 10 of the Complaint and therefore denies those allegations.

11. Huawei admits that the title of the '398 Patent is "Orthogonal Frequency Division Multiplex Systems." Huawei denies the remaining allegations of Paragraph 11 of the Complaint.

12. Huawei denies the allegations of Paragraph 12 of the Complaint.

13. Huawei denies the allegations of Paragraph 13 of the Complaint.

14. Huawei denies the allegations of Paragraph 14 of the Complaint.

15. Huawei admits that the Examiner made the quoted statement, but it denies all other allegations of Paragraph 15 of the Complaint.

16. Huawei admits that the Complaint accurately reproduces Figure 5 from the '398 Patent, but it denies all other allegations of Paragraph 16 of the Complaint.

17. Huawei denies the allegations of Paragraph 17 of the Complaint.

18. Huawei admits that the '398 Patent issued on July 11, 2000, but it denies all other allegations of Paragraph 18 of the Complaint.

19. Huawei denies the allegations of Paragraph 19 of the Complaint.

20. Huawei admits that a copy of the '398 Patent is attached to the Complaint as Exhibit A.

The Enhanced Handset Patents

21. Huawei lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 21 of the Complaint and therefore denies those allegations.

22. Huawei admits that the '027 Patent, the '372 Patent, the '542 Patent, the '684 Patent, the '381 Patent, the '691 Patent, and the '169 Patent are each entitled "Enhanced Wireless Handset, Including Direct Handset-to-Handset Communication Mode." Huawei denies the remaining allegations of Paragraph 22 of the Complaint.

23. Huawei admits that the Examiner allowed the claims, but it denies the remaining allegations of Paragraph 23 of the Complaint.

24. Huawei admits that the Examiner made the quoted statement, but it denies all other allegations of Paragraph 24 of the Complaint.

25. Huawei denies the allegations of Paragraph 25 of the Complaint.

26. Huawei denies the allegations of Paragraph 26 of the Complaint.

27. Huawei denies the allegations of Paragraph 27 of the Complaint.

28. Huawei denies the allegations of Paragraph 28 of the Complaint.

A. United States Patent No. 6,484,027

29. Huawei admits that the '027 Patent issued on November 19, 2002. Huawei denies the remaining allegations of Paragraph 29 of the Complaint.

30. Huawei denies the allegations of Paragraph 30 of the Complaint.

31. Huawei admits that a copy of the '027 Patent is attached to the Complaint as Exhibit B.

B. United States Patent No. 6,865,372

32. Huawei admits that the '372 Patent issued on March 8, 2005. Huawei denies the remaining allegations of Paragraph 32 of the Complaint.

33. Huawei admits that the '372 Patent is a divisional of the '027 Patent.

34. Huawei denies the allegations of Paragraph 34 of the Complaint.

35. Huawei admits that a copy of the '372 Patent is attached to the Complaint as Exhibit C.

C. United States Patent No. 7,693,542

36. Huawei admits that the '542 Patent issued on April 6, 2010. Huawei denies the remaining allegations of Paragraph 36 of the Complaint.

37. Huawei admits that the '542 Patent is a divisional of the '027 Patent.

38. Huawei denies the allegations of Paragraph 38 of the Complaint.

39. Huawei admits that a copy of the '542 Patent is attached to the Complaint as Exhibit D.

D. United States Patent No. 7,885,684

40. Huawei admits that the '684 Patent issued on February 8, 2011. Huawei denies the remaining allegations of Paragraph 40 of the Complaint.

41. Huawei admits that the '684 Patent is a continuation of the '542 Patent.

42. Huawei denies the allegations of Paragraph 42 of the Complaint.

43. Huawei admits that a copy of the '684 Patent is attached to the Complaint as Exhibit E.

E. United States Patent No. 8,019,381

44. Huawei admits that the '381 Patent issued on September 13, 2011. Huawei denies the remaining allegations of Paragraph 44 of the Complaint.

45. Huawei admits that the '381 Patent is a continuation of the '684 Patent.

46. Huawei denies the allegations of Paragraph 46 of the Complaint.

47. Huawei admits that a copy of the '381 Patent is attached to the Complaint as Exhibit F.

F. United States Patent No. 8,265,691

48. Huawei admits that the '691 Patent issued on September 11, 2012. Huawei denies the remaining allegations of Paragraph 48 of the Complaint.

49. Huawei admits that the '691 Patent is a continuation of the '381 Patent.

50. Huawei denies the allegations of Paragraph 50 of the Complaint.

51. Huawei admits that a copy of the '691 Patent is attached to the Complaint as Exhibit G.

G. United States Patent No. 8,346,169

52. Huawei admits that the '169 Patent issued on January 1, 2013. Huawei denies the remaining allegations of Paragraph 52 of the Complaint.

53. Huawei admits that the '169 Patent is a continuation of the '691 Patent.

54. Huawei denies the allegations of Paragraph 54 of the Complaint.

55. Huawei admits that a copy of the '169 Patent is attached to the Complaint as Exhibit H.

56. Huawei admits that Huawei Device Co., Ltd. makes and sells mobile phones, tablets, and other wireless electronic devices. Huawei admits that Huawei Device

USA, Inc. sells phones, tablets, and other wireless electronic devices. Huawei denies the remaining allegations of Paragraph 56 of the Complaint.

57. Huawei admits that Huawei wireless handsets series include the Mate, P Series, G Series, Y Series, and Nexus Series.

58. Huawei admits that Huawei's wireless handset models include the following: GX8, P8lite, P10, P10 Plus, P10 Lite, P8 Lite, P9, P9 Plus, Honor 8 Pro, Honor Magic, Enjoy 5s, 6 and 6s, Mate 9, Mate 9 Pro, Mate 9 Porsche Design, Nova, G9, Nova Plus, Honor Pad, 5c, 6X, 7, Bee, 4C, Holly 3, Holly 2 Plus, 5A, 8, and Note 8, Y3II, Y5II, Y6, Y6 Pro, and Y 635. Huawei denies the remaining allegations of Paragraph 58 of the Complaint.

59. Huawei denies the allegations of Paragraph 59 of the Complaint.

60. Huawei admits that the MateBook and MediaPad lines of tablets and PCs exist.

61. Huawei admits that the MateBook, MateBook Signature Edition, MediaPad M3, M3 8.4, MediaPad T2 10.0 Pro, T2 7.0 Pro, T2 7.0, MediaPad X2, MediaPad M2 8.0, MediaPad M2 10.0, M2 7.0 MediaPad T1 7.0, and T1 10 models of tablets and PCs exist.

62. Huawei denies the allegations of Paragraph 62 of the Complaint.

63. Huawei denies the allegations of Paragraph 63 of the Complaint.

64. Huawei admits that the Huawei Fit, TalkBand B2, and Huawei Watch exist.

65. Huawei admits that the image of Paragraph 65 appears to be of Huawei Watches.

66. Huawei admits that some Huawei devices support some versions of the Bluetooth® wireless standards. Huawei denies the remaining allegations of Paragraph 66 of the Complaint.

67. Huawei admits that some Huawei devices support some versions of the Long-Term Evolution cellular standard. Huawei denies the remaining allegations of Paragraph 67 of the Complaint.

68. Huawei admits that some Huawei devices support some versions of the Long-Term Evolution cellular standard. Huawei denies the remaining allegations of Paragraph 68 of the Complaint.

COUNT I
ALLEGED INFRINGEMENT OF U.S. PATENT NO. 6,088,398

69. Huawei realleges its responses to paragraphs 1-68 as if fully set forth here.

70. Huawei denies the allegations of Paragraph 70 of the Complaint.

71. Huawei denies the allegations of Paragraph 71 of the Complaint.

72. Huawei denies the allegations of Paragraph 72 of the Complaint.

73. Huawei denies the allegations of Paragraph 73 of the Complaint.

74. Huawei denies the allegations of Paragraph 74 of the Complaint.

75. Huawei denies the allegations of Paragraph 75 of the Complaint.

76. Huawei denies the allegations of Paragraph 76 of the Complaint.

77. Huawei denies the allegations of Paragraph 77 of the Complaint.

78. Huawei denies the allegations of Paragraph 78 of the Complaint.

COUNT II
ALLEGED INFRINGEMENT OF U.S. PATENT No. 6,484,027

79. Huawei realleges its responses to paragraphs 1-78 as if fully set forth here.

80. Huawei denies the allegations of Paragraph 80 of the Complaint.
81. Huawei denies the allegations of Paragraph 81 of the Complaint.
82. Huawei denies the allegations of Paragraph 82 of the Complaint.
83. Huawei denies the allegations of Paragraph 83 of the Complaint.
84. Huawei denies the allegations of Paragraph 84 of the Complaint.
85. Huawei denies the allegations of Paragraph 85 of the Complaint.
86. Huawei denies the allegations of Paragraph 86 of the Complaint.
87. Huawei denies the allegations of Paragraph 87 of the Complaint.
88. Huawei denies the allegations of Paragraph 88 of the Complaint.
89. Huawei denies the allegations of Paragraph 89 of the Complaint.
90. The image of Paragraph 90 of the Complaint lacks sufficient information to identify what is shown. Huawei, therefore, denies the allegations of Paragraph 90 of the Complaint.
91. Huawei denies the allegations of Paragraph 91 of the Complaint.
92. Huawei denies the allegations of Paragraph 92 of the Complaint.
93. Huawei denies the allegations of Paragraph 93 of the Complaint.
94. Huawei denies the allegations of Paragraph 94 of the Complaint.

COUNT III
ALLEGED INFRINGEMENT OF U.S. PATENT No. 6,865,372

95. Huawei realleges its responses to paragraphs 1-94 as if fully set forth here.
96. Huawei denies the allegations of Paragraph 96 of the Complaint.
97. Huawei denies the allegations of Paragraph 97 of the Complaint.
98. Huawei denies the allegations of Paragraph 98 of the Complaint.

99. Huawei admits that the P8lite is compatible with the Bluetooth® 4.0. Huawei denies the remaining allegations of Paragraph 99 of the Complaint.

100. Huawei admits that the P8lite is compatible with the Bluetooth® 4.0. Huawei denies the remaining allegations of Paragraph 99 of the Complaint.

101. Huawei denies the allegations of Paragraph 101 of the Complaint.

102. Huawei denies the allegations of Paragraph 102 of the Complaint.

103. Huawei denies the allegations of Paragraph 103 of the Complaint.

104. Huawei denies the allegations of Paragraph 104 of the Complaint.

105. Huawei denies the allegations of Paragraph 105 of the Complaint.

106. The image of Paragraph 106 of the Complaint lacks sufficient information to identify what is shown. Huawei, therefore, denies the allegations of Paragraph 106 of the Complaint.

107. Huawei denies the allegations of Paragraph 107 of the Complaint.

108. Huawei denies the allegations of Paragraph 108 of the Complaint.

109. Huawei denies the allegations of Paragraph 109 of the Complaint.

110. Huawei denies the allegations of Paragraph 110 of the Complaint.

111. Huawei denies the allegations of Paragraph 111 of the Complaint.

112. Huawei denies the allegations of Paragraph 112 of the Complaint.

COUNT IV
ALLEGED INFRINGEMENT OF U.S. PATENT No. 7,693,542

113. Huawei realleges its responses to paragraphs 1-112 as if fully set forth here.

114. Huawei denies the allegations of Paragraph 114 of the Complaint.

115. Huawei denies the allegations of Paragraph 115 of the Complaint.

- 116. Huawei denies the allegations of Paragraph 116 of the Complaint.
- 117. Huawei denies the allegations of Paragraph 117 of the Complaint.
- 118. Huawei denies the allegations of Paragraph 118 of the Complaint.
- 119. Huawei denies the allegations of Paragraph 119 of the Complaint.
- 120. Huawei denies the allegations of Paragraph 120 of the Complaint.
- 121. Huawei denies the allegations of Paragraph 121 of the Complaint.
- 122. Huawei denies the allegations of Paragraph 122 of the Complaint.
- 123. Huawei denies the allegations of Paragraph 123 of the Complaint.
- 124. Huawei denies the allegations of Paragraph 124 of the Complaint.
- 125. Huawei denies the allegations of Paragraph 125 of the Complaint.
- 126. Huawei denies the allegations of Paragraph 126 of the Complaint.

COUNT V
ALLEGED INFRINGEMENT OF U.S. PATENT No. 7,885,684

127. Huawei realleges its responses to paragraphs 1-126 as if fully set forth here.

- 128. Huawei denies the allegations of Paragraph 128 of the Complaint.
- 129. Huawei denies the allegations of Paragraph 129 of the Complaint.
- 130. Huawei denies the allegations of Paragraph 130 of the Complaint.
- 131. Huawei denies the allegations of Paragraph 131 of the Complaint.
- 132. Huawei denies the allegations of Paragraph 132 of the Complaint.
- 133. Huawei denies the allegations of Paragraph 133 of the Complaint.
- 134. Huawei denies the allegations of Paragraph 134 of the Complaint.
- 135. Huawei denies the allegations of Paragraph 135 of the Complaint.
- 136. Huawei denies the allegations of Paragraph 136 of the Complaint.

- 137. Huawei denies the allegations of Paragraph 137 of the Complaint.
- 138. Huawei denies the allegations of Paragraph 138 of the Complaint.
- 139. Huawei denies the allegations of Paragraph 139 of the Complaint.
- 140. Huawei denies the allegations of Paragraph 140 of the Complaint.

COUNT VI
ALLEGED INFRINGEMENT OF U.S. PATENT No. 8,019,381

141. Huawei realleges its responses to paragraphs 1-140 as if fully set forth here.

- 142. Huawei denies the allegations of Paragraph 142 of the Complaint.
- 143. Huawei denies the allegations of Paragraph 143 of the Complaint.
- 144. Huawei denies the allegations of Paragraph 144 of the Complaint.
- 145. Huawei denies the allegations of Paragraph 145 of the Complaint.
- 146. Huawei denies the allegations of Paragraph 146 of the Complaint.
- 147. Huawei denies the allegations of Paragraph 147 of the Complaint.
- 148. Huawei denies the allegations of Paragraph 148 of the Complaint.
- 149. Huawei denies the allegations of Paragraph 149 of the Complaint.
- 150. Huawei denies the allegations of Paragraph 150 of the Complaint.
- 151. Huawei denies the allegations of Paragraph 151 of the Complaint.
- 152. Huawei denies the allegations of Paragraph 152 of the Complaint.
- 153. Huawei denies the allegations of Paragraph 153 of the Complaint.
- 154. Huawei denies the allegations of Paragraph 154 of the Complaint.

COUNT VII
ALLEGED INFRINGEMENT OF U.S. PATENT No. 8,265,691

155. Huawei realleges its responses to paragraphs 1-118 as if fully set forth here.

156. Huawei denies the allegations of Paragraph 156 of the Complaint.

157. Huawei denies the allegations of Paragraph 157 of the Complaint.

158. Huawei denies the allegations of Paragraph 158 of the Complaint.

159. Huawei denies the allegations of Paragraph 159 of the Complaint.

160. Huawei denies the allegations of Paragraph 160 of the Complaint.

161. Huawei denies the allegations of Paragraph 161 of the Complaint.

162. Huawei denies the allegations of Paragraph 162 of the Complaint.

163. Huawei denies the allegations of Paragraph 163 of the Complaint.

164. Huawei denies the allegations of Paragraph 164 of the Complaint.

165. Huawei denies the allegations of Paragraph 165 of the Complaint.

166. Huawei denies the allegations of Paragraph 166 of the Complaint.

167. Huawei denies the allegations of Paragraph 167 of the Complaint.

168. Huawei denies the allegations of Paragraph 168 of the Complaint.

169. Huawei denies the allegations of Paragraph 169 of the Complaint.

COUNT VIII
ALLEGED INFRINGEMENT OF U.S. PATENT No. 8,346,169

170. Huawei is uncertain as to what Plaintiff means by “them” in this paragraph, but Huawei realleges its responses to paragraphs 1-169 as if fully set forth here as that is Huawei’s best guess as to Plaintiff’s intent based on the previous paragraphs.

- 171. Huawei denies the allegations of Paragraph 171 of the Complaint.
- 172. Huawei denies the allegations of Paragraph 172 of the Complaint.
- 173. Huawei denies the allegations of Paragraph 173 of the Complaint.
- 174. Huawei denies the allegations of Paragraph 174 of the Complaint.
- 175. Huawei denies the allegations of Paragraph 175 of the Complaint.
- 176. Huawei denies the allegations of Paragraph 176 of the Complaint.
- 177. Huawei denies the allegations of Paragraph 177 of the Complaint.
- 178. Huawei denies the allegations of Paragraph 178 of the Complaint.

NOTICE OF REQUIREMENT OF LITIGATION HOLD

179. Paragraph 179 contains instructions for which no response is required. To the extent an answer is required, Huawei retains documents as required by law and denies that Plaintiff is entitled to any relief.

180. Paragraph 180 contains instructions for which no response is required. To the extent an answer is required, Huawei retains documents as required by law and denies that Plaintiff is entitled to any relief.

181. Paragraph 181 contains instructions for which no response is required. To the extent an answer is required, Huawei retains documents as required by law and denies that Plaintiff is entitled to any relief.

NOTICE

182. Huawei lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 182 of the Complaint and therefore denies those allegations.

183. Huawei lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 183 of the Complaint and therefore denies those allegations.

JURY DEMAND

Huawei does not object to Plaintiff's demand for a trial by jury of all issues so triable.

PRAYER FOR RELIEF

Huawei denies that Plaintiff is entitled to any of the relief sought in its Complaint or to any relief whatsoever.

AFFIRMATIVE DEFENSES

By alleging the Affirmative Defenses set forth below, Huawei does not agree or concede that it bears the burden of proof or the burden of persuasion on any of these issues, either in whole or in part. For its Affirmative Defenses to the Complaint, Huawei alleges the following:

FIRST AFFIRMATIVE DEFENSE (Failure to State a Claim)

1. The Complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE (No Patent Infringement)

2. Huawei has not infringed and is not infringing any valid or enforceable claim of any of the patents listed in Plaintiff's Complaint, either literally or under the doctrine of equivalents.

**THIRD AFFIRMATIVE DEFENSE
(Patent Invalidity)**

3. Each of the patents listed in Plaintiff's complaint is invalid and/or unenforceable for failing to meet one or more of the requisite conditions for patentability under Title 35 of the United States Code, including, without limitation, §§ 101, 102, 103, and 112.

RESERVATION OF ADDITIONAL DEFENSES

4. Huawei reserves any and all additional defenses available as may be discovered.

JURY TRIAL DEMAND

Huawei demands a trial by jury of all issues so triable.

REQUEST FOR RELIEF

WHEREFORE, Huawei requests entry of judgment in its favor and against Blue Sky as follows:

- A. Dismiss Blue Sky's Complaint in its entirety, with prejudice;
- B. Enter judgment in favor of Huawei and against Blue Sky;
- C. Enter a judgment and declaration that Huawei has not infringed any of the patents listed in Blue Sky's complaint;
- D. Enter a judgment that each of the patents listed in Blue Sky's complaint is invalid;
- E. Enter a judgment and declaration that no damages or royalties, attorneys' fees, costs, pre- or post-judgment interest, or any other compensation or damages are due or owed by Huawei to Blue Sky for any of the acts alleged in Blue Sky's Complaint;

F. Award to Huawei its attorneys' fees, expenses, and costs incurred in this action, pursuant to 35 U.S.C. § 285; and

G. Award to Huawei such other and further relief as the Court may deem just.

Dated: June 13, 2017

Respectfully submitted,

/s/ Aaron D. Davidson
Aaron D. Davidson
Texas Bar No. 24007080
aaron.davidson@klemchuk.com
Gary R. Sorden
Texas Bar No. 24066124
gary.sorden@klemchuk.com
Mark D. Perantie
Texas Bar No. 24053647
mark.perantie@klemchuk.com
Timothy J.H. Craddock
Texas Bar No. 24082868
tim.craddock@klemchuk.com
KLEMCHUK LLP
8150 N. Central Expressway
10th Floor
Dallas, Texas 75206
Tel: 214-367-6000
Fax: 214-367-6001

**ATTORNEY FOR DEFENDANTS
HUAWEI DEVICE CO. LTD. AND
HUAWEI DEVICE USA, INC.**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system this 13th day of June, 2017.

/s/ Aaron D. Davidson
Aaron D. Davidson